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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
	)	
Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation	)	**ET Docket No. 93-62**
	)	
	)	

LAND MOBILE COMMUNICATIONS COUNCIL
COMMENTS IN RESPONSE TO

NOTICE OF PROPOSED RULE MAKING

INTRODUCTION

The Land Mobile Communications Council ("LMCC") is a non-profit association of organizations representing users of land mobile radio and providers of land mobile services and equipment. LMCC is dedicated to securing and maintaining sufficient allocations of radio frequencies for the land mobile radio services in order to meet the immediate and long-term requirements of all land mobile radio users. In this capacity, LMCC acts on behalf of the vast majority of public safety, business, industrial, land transportation, private, common carrier, and land mobile radio users, as well as a diversity of land mobile service providers and equipment manufacturers.[1/]

1/ LMCC's membership includes:
American Association of State Highway and Transportation Officials
American Automobile Association
American Mobile Telecommunications Associations
American Petroleum Institute
American Trucking Associations, Inc.
Association of American Railroads

(continued...)

LMCC submits these Comments in general support of the Commission's Notice of Proposed Rule Making, ("ANSI standards proposal NPRM") to adopt the new 1992 American National Standards Institute (ANSI) guidelines in evaluating the environmental effects of radiofrequency (RF) radiation from FCC-regulated facilities.[2/] Specifically, LMCC supports adoption of the ANSI distinction between "controlled" and "uncontrolled" environments for setting RF guidelines based upon the type of facility and the context in which it is used; an exclusion from the ANSI standards for low power devices; a categorical exclusion from environmental evaluation for all Part 90 services and similar private operators; and the grandfathering of all existing transmitting facilities on the basis that no demonstrable conditions exist

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1/(...continued)

Associated Public Safety Communications Officers, Inc.
Cellular Telecommunications Industry Association
Forest Industries Telecommunications
Forestry-Conservation Communications Association
International Association of Fire Chiefs
International Association of Fish and Wildlife Agencies
International Municipal Signal Association
International Taxicab and Livery Association
Manufacturers Radio Frequency Advisory Committee
National Association of State Foresters
Special Industrial Radio Service Association, Inc.
Telecommunications Industry Association
Telocator
Utilities Telecommunications Council

2/ The new ANSI standards were adopted on November 18, 1992. The standards were developed in association with the American Institute of Electrical and Electronic Engineers, Inc. (IEEE). The standard is entitled ANSI/IEEE C95.1-1992.

which give cause not to continue the provisions previously accepted by the Commission.

I. The Commission Should Continue to Adopt ANSI Standards Rather Than Other Available Data and Information.

LMCC supports the Commission's use and application of ANSI studies and standards. LMCC notes that ANSI is a non-profit, privately funded, membership organization that coordinates the development of voluntary and national standards in the United States. ANSI's membership is broadly diverse, representing industry, government, and academia. The 1992 ANSI study is based upon the work of 120 scientists, engineers and physicians and represents seven years of intense study.[3/] With participants and representation from all segments of the scientific community, the study can be relied upon as unbiased and objective. LMCC believes that the ANSI study is the most comprehensive and reliable study of RF exposure. Accordingly, LMCC urges the Commission to adopt the ANSI findings as a unified and authoritative opinion on the issues at hand.

II. Definition of "Controlled" and "Uncontrolled" Environments.

The 1992 ANSI guidelines specify two sets of standards for human exposure to radiofrequency (RF) energy. ANSI delineates the two environments as "controlled" and "uncontrolled." The FCC seeks comment on defining or setting guidelines for

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3/ "IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 Khz to 300 Ghz."

distinguishing the two, suggesting that where the "general public" is concerned, a more stringent "uncontrolled" environment standard would apply.

LMCC proposes that the distinction between the two environments be based upon the context of the equipment's use. In commercial or business settings, where the service is available to only a limited number of eligible users, "controlled" standards should be applied. Where the general public is likely to use the equipment, or where the use is effectively available to a substantial portion of the public, stricter "uncontrolled" environment standards should apply. LMCC believes that this distinction and emphasis on the class or characteristics of the user reflects ANSI's assessment that, typically, a "controlled" environment refers to a commercial setting or workplace where the operator is "knowledgeable" in the use of his equipment, and where use of the transmitting equipment is typically in the commercial or business application. ANSI's "uncontrolled" environment encompasses the general public where the use of transmitting equipment is incidental or personal and the user can not reasonably be expected to be "knowledgeable" as to the presence of a transmitting device.[4/]

In other regulatory considerations, the Commission has proposed similar distinctions based upon context of use and class of user. Most recently, in considering the appropriate regulatory treatment of mobile services in the Notice of Proposed

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4/ See, ANSI standards NPRM, at para. 12.

Rule Making, In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act ("Regulatory Parity NPRM"), GN Docket No. 93-252, released October 8, 1993, the Commission sought comment on whether a distinction for purposes of regulatory application should be drawn between "limited-eligibility services that are, as a practical matter, available to a substantial portion of the public, and such services that are offered to small or specialized user groups."[5/] In that rule making, the FCC addresses the classification of services based upon the availability of the service to the general public or limited, eligible subscriber groups. A similar analysis should be employed to determine which set of ANSI standards apply to which service.

LMCC urges the Commission to adopt such an analysis, and particularly, apply a "controlled" environment standard for Part 90 among other services, and an "uncontrolled" environment standard to Parts 22 and 99 services. LMCC believes that organizing the services in this way responds to the ANSI emphasis on the setting in which the device is used, and will respond to the Commission's focus which is to provide more control where the general public is most likely exposed. LMCC asserts further that organizing and applying standards pursuant to rule part provides licensees and manufacturers with clear and predictable guidelines for complying with the operating standards.

5/ Regulatory Parity NPRM, at para. 25.

Accordingly, LMCC suggests that services presently regulated under Part 90 of the Commission's Rules should be held to a "controlled" environment standard in light of the user knowledge present in the business and subscription services contained in this part. In such business settings, the nature and use of equipment, as well as the operator of the equipment, is a known and controllable universe. The same can not be said for services under all other rule parts where both the equipment and its users are broadly diverse and unlimited.[6/] LMCC recommends that the Commission make allowances for cases where users are provided with consistent and comprehensive information in their respective user instruction manuals relative to radiofrequency energy. We thus foresee the day when even Parts 22 and 99 could be considered for inclusion in the controlled category.

LMCC supports the careful consideration of all issues related to RF emission and the potential adverse effects of exposure. LMCC notes, however, that the ANSI standards for both "controlled" and "uncontrolled" environments represent "safe thresholds," with safety margins of 10 for the "controlled"

6/ As noted above, the Commission recently initiated a proceeding designed to categorize mobile communications service providers. As a result of that proceeding, it is likely that some specialized mobile radio ("SMR") operators will be characterized as commercial mobile service providers ("CMSP"). Because the attributes of CMSP customers include, by definition, their classification as members of the general public, LMCC expects that some CMSP customers could be considered to operate in an uncontrolled environment.

environments, and 50 for the "uncontrolled" environments.[7/] Either set of standards therefore represents a "safe" guideline for human exposure to RF radiation.

III. EXCLUSION FOR LOW POWER DEVICES

The FCC has proposed adopting the ANSI guidelines providing an exclusion for low-power devices. This exclusion applies where the radiating structure is maintained at minimum 2.5 cm from the body. The low-power threshold varies for the "controlled" and the "uncontrolled" environments.

Devices operating in the 100 Khz -450 MHz frequency band at seven watts or less in "controlled" environments are excluded from the ANSI standards, whereas devices operating in the same band in "uncontrolled" environments are only exempt if operating at 1.4 watts or less. Neither device is excluded if the radiating element is maintained, during normal operation, closer than 2.5 cm to the body. In the 450-1500 MHz band, the radiated power must be limited in "controlled" environments to 7(450/f) watts, and in "uncontrolled" environments to 1.4(450/f) watts. In this frequency band as well, the 2.5 cm distance of the radiating device from the body must be maintained to qualify for the low power exclusion from the ANSI guidelines.

LMCC fully supports the adoption of the low power exclusion as provided by the ANSI standards for Part 90 services and other

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7/ "IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz."

similar services with the limits imposed by "controlled" environment standards. LMCC suggests, in addition, that the Commission seek guidance so that it may allow for an additional low power exclusion that does not necessitate the associated physical spacing limitation. LMCC urges the Commission to consider the development of such a provision, particularly in light of the recent technological development of personal communications services ("PCS").

Similarly, the 1992 ANSI standard limits the low power exclusion to frequencies of 1.5 GHz and below. LMCC recommends Commission consideration of the development of PCS and other Part 99 services. LMCC suggests that the low power exclusion be appropriately (as determined by ANSI) extended to include the new PCS service and also any spectrum that may result from new spectrum allocations that may arise in the future, and use the frequency dependent formula prescribed by ANSI to determine the permitted power level.

IV. CATEGORICAL EXCLUSIONS

In adopting the 1982 ANSI standards, the Commission excluded from environmental evaluation, by category, certain facilities and transmitters that, under reasonably expected use, would not

violate the 1982 ANSI guidelines. In that proceeding, the Commission excluded Part 90, and other services, concluding that:

> "no data or specific examples were presented to support EPA's position, and data submitted by other respondents are persuasive in showing that excessive exposure is unlikely. Therefore, until such time as contradictory evidence is brought to our attention, we are adopting our original proposal to exclude these types of transmitting facilities from routine environmental evaluation with respect to RF radiation."[8/]

In the NPRM, the Commission seeks comment on whether these categorical exclusions should be upheld. LMCC urges the Commission to continue its policy of categorical exclusions. LMCC asks that the Commission specifically continue to exclude equipment regulated under Parts 22, 90,94,95 and portions of Parts 21, 74 and 80, as well as similarly operated equipment.

In paragraph 21 of the ANSI standards NPRM, the Commission sought comments on whether it should require work procedure certifications to verify ANSI compliance. LMCC believes that a formal certification is unnecessary and would pose an administrative burden not commensurate with the attendant benefit. LMCC does assert, however, that the Commission should require that each licensee employs appropriate work place standards to assure that the limits of the ANSI standards are, in fact, met.

In general, LMCC supports the Commission's adoption of categorical exclusions where consistent industry and service operating standards indicate a predictable and reliable

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8/ Second Report and Order, 2 FCC Rcd 2064 (1987).

compliance with the ANSI standards. In adopting such exclusions, the Commission can promote the growth and availability of radio services to the public, yet ensure that safe operating conditions are maintained.

V. EFFECTIVE DATE AND OTHER ISSUES

LMCC supports the Commission's proposal that all applications submitted after the effective date should be subject to the new ANSI guidelines, but favors grandfathering equipment presently in use. In support of grandfathering existing equipment, LMCC notes that there has not been one substantiated case of harm caused by RF exposure.

LMCC also supports the Commission's proposal to streamline the license process by requiring only a certification of adherence to the applicable standards. LMCC asserts that this is an adequate and efficient method of ensuring safe equipment and operating conditions.

CONCLUSION

For the foregoing reasons, the Land Mobile Communications Council respectfully supports the Commission's proposal to adopt the 1992 ANSI guidelines in evaluating the environmental effects of radiofrequency radiation from FCC-regulated facilities, and submits these comments in response to that proposal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Terri Thomas, a secretary in the law firm of Keller and Heckman, do hereby certify that a copy of the foregoing Comments in Response to Notice of Proposed Rule Making has been served this 25th day of January 1994 by hand delivery to the following:

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